BILL NO. S-90-08-29

SPECIAL ORDINANCE NO. S-220-90

AN ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO ISSUE ITS "CITY OF FORT WAYNE, INDIANA, ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 1990 (XOLOX CORPORATION PROJECT)" AND LOAN THE PROCEEDS THEREOF TO XOLOX CORPORATION, AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO.

WHEREAS, the City of Fort Wayne, Indiana (the "City"), is a municipal corporation and political subdivision of the State of Indiana and by virtue of Indiana Section 36-7-12-1 et seq., as amended (the "Act"), is authorized and empowered to adopt this ordinance (this "Bond Ordinance") and to carry out its provisions; and

WHEREAS, Xolox Corporation, an Indiana corporation (the "Borrower"), has agreed to equip a certain economic development facility consisting of the acquisition of manufacturing equipment and a modular class 100 cleanroom to be located at 1415 Dividend Road, Fort Wayne, Indiana, for the manufacture of components for the computer disk drive market (the "Project"), if the City will finance a portion of the cost of the Project with the proceeds from the sale of its City of Fort Wayne, Indiana, Economic Development Revenue Bonds, Series 1990 (Xolox Corporation Project), in the aggregate principal amount of $3,200,000 (the "Bonds"); and

WHEREAS, the Fort Wayne Economic Development Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to this Common Council the forms of (1) the Loan Agreement, Security Agreement and Financing Statement (the "Loan Agreement"), dated as of September 1, 1990, between the City and the Borrower providing for the issuance and sale of the Bonds by the City, the loan by the City to the borrower of the proceeds therefrom and securing

the payment of the Borrower's obligations to the City; (2) the Trust Indenture between Fort Wayne National Bank, as trustee (the "Trustee"), and the City, dated as of September 1, 1990 (the "Indenture"), assigning the City's rights under the Loan Agreement to the Trustee for the benefit of the holders of the Bonds; (3) the form of the Bonds (contained in the Indenture); (4) the Official Statement (the "Official Statement") pursuant to which the Underwriter will offer the Bonds; and (5) this Bond Ordinance (the foregoing documents are hereinafter referred to, collectively, as the "Loan Documents").

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, THAT:

SECTION 1. **Findings; Public Benefits.** The Common Council hereby finds and determines that the Project is an "economic development facility" as that phrase is used in the Act; that the acquisition, construction and equipping of the Project will increase employment opportunities and increase diversification of economic development in the City, will improve and promote the economic stability, development and welfare in the City, will encourage and promote the expansion of industry, trade and commerce in the City and the location of other new industries in such area; and that the public benefits to be accomplished by this Bond Ordinance, in tending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in the Act) which will be required by the Project.

SECTION 2. **Authorization of the Bonds.** In order to pay a portion of the cost of the Project, the Bonds are hereby authorized to be issued, sold and delivered. Any additional costs of the Project will be paid for by the Borrower.

SECTION 3. Terms of the Bonds. The Bonds shall (i) be in the aggregate principal amount of $3,200,000, (ii) be dated as of September 1, 1990, (iii) be executed at or prior to the closing date by the manual or facsimile signatures of Mayor of the City and the Clerk of the City, (iv) bear interest from the date of delivery thereof at fixed rates of interest not to exceed ten percent (10%) per annum, (v) mature serially in six (6) annual installments on September 1 of each year commencing September 1, 1991, and continuing to and including September 1, 1996; (vi) be payable as to interest in semi-annual installments on September 1 and March 1 of each year commencing March 1, 1991, and continuing to and including September 1, 1996; (vii) be issuable in denominations of $5,000 or whole multiples thereof, (viii) be issued only in fully registered form, (ix) be payable through such medium and at such places as provided therein, and (x) be subject to optional and mandatory redemption as provided in the Loan Documents. The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but are limited obligations of the City payable solely from revenues and other amounts derived from the Loan Documents. Forms of the Loan Documents are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Clerk is hereby directed to insert them into the minutes of the Common Council and to keep them on file.

SECTION 4. Sale of the Bonds. The Mayor and the Clerk are hereby authorized and directed to sell the Bonds to or upon the order of the purchasers identified by the Underwriter pursuant to the Indenture at a price of $3,200,000 representing 100% of the par value thereof, payment of which shall be made to the Trustee under the Indenture.

SECTION 5. Loan Agreement. In order to provide for the commitment of the City to sell the Bonds and to provide for the loan of the proceeds of the Bonds to the Borrower and the payment by the Borrower of amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds, the Mayor and the Clerk are hereby authorized and directed to execute and deliver, in the name of an on behalf of the City, the Loan Agreement in substantially the form submitted to this Common Council, which is hereby approved in all respects.

SECTION 6. Indenture. In order to assign the City's rights under the Loan Agreement to the Trustee for the benefit of the holders of the Bonds, the Mayor and the Clerk are hereby authorized and directed to execute and deliver, in the name and on behalf of the City, the Indenture in substantially the form submitted to this Common Council (which includes the form of the Bonds), which is hereby approved in all respects.

SECTION 7. Bonds. The Mayor and the Clerk are hereby authorized and directed to execute and deliver, in the name of and on behalf of the City, the Bonds in substantially the form submitted to this Common Council, which is hereby approved in all respect.

SECTION 8. Official Statement. The Official Statement, in substantially the form submitted to this Common Council, is hereby approved in all respects, and is hereby deemed final as of its date, except for the omission of no more than the following information: the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, any other terms or provisions required by an issuer of such securities to be specified in a competitive bid, ratings, other terms of the securities depending on such matters, and the identity of the underwriter(s).

SECTION 9. Execution. The Mayor and the Clerk are hereby authorized and directed to execute and deliver, in the name and on behalf of the City, the Bonds (in the form contained in the Indenture), the Loan Agreement, the Indenture and the Official Statement. The Mayor and the Clerk are hereby authorized, without further approval of the Common Council or the Fort Wayne Economic Development Commission, to approve such changes in the Loan Documents as may be permitted by Act, such approval to be conclusively evidenced by their execution thereof.

SECTION 10. General. The Mayor and the Clerk are, and each of them is, hereby authorized and directed, in the name and on behalf of the City, to execute any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the acquisition, construction and equipping of the Project by the Borrower, the issuance and sale of the Bonds, and the securing of the Bonds under the Loan Documents.

SECTION 11. Binding Effect. The provisions of this Bond Ordinance and the Loan Documents to which the City is a party shall constitute a binding contract between the City and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

SECTION 12. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 13. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon its

adoption by the Common Council and approval by the Presiding Officer.

SECTION 14. Copies of Loan Documents on File. Two copies of the Loan Documents incorporated into this Bond Ordinance were duly filed in the office of the Clerk and are available for public inspection in accordance with Indiana Code Section 36-1-5-4.

SECTION 15. That this Ordinance shall be in full force and effect from and after its passage, and any and all necessary approval by the Mayor.

Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Henry, seconded by Talarico, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock ____.M.,E.S.T.

DATED: 8-28-90

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry, seconded by Bradbury, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA				✓
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO				✓

DATED: 9-11-90.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ (APPROPRIATION) (GENERAL) (SPECIAL) ~~(ZONING MAP)~~ ORDINANCE RESOLUTION NO. S-220-90 on the 11th day of September, 19 90,

ATTEST
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Charles O. Reed
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of September, 19 90 at the hour of 2:00 o'clock P.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 14th day of September, 19 90, at the hour of 5:30 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

MILLER CARSON & BOXBERGER
(FORMERLY LIVINGSTON DILDINE HAYNIE & YODER)
ATTORNEYS AT LAW
1400 ONE SUMMIT SQUARE
FORT WAYNE, INDIANA 46802-3173
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MILFORD M. (TIM) MILLER
PHILIP L. CARSON
BRUCE O. BOXBERGER
THOMAS W. YODER
CHARLES R. COGDELL
EDWARD L. MURPHY, JR.
C. ERIK CHICKEDANTZ
GRANT F. SHIPLEY
JOHN J. WERNET
RICHARD P. SAMEK
T. DEAN SWIHART
GREGORY M. ANTALIS
PHILLIP A. RENZ
EDWARD J. LIPTAK
ROBERT T. KEEN, JR.
LARRY L. BARNARD
EDMUND P. KOS
DIANA C. BAUER
ARTHUR E. MANDELBAUM

September 11, 1990

Sandra Kennedy, City Clerk
City of Fort Wayne
One Main Street
City-County Building
Fort Wayne, Indiana 46802

Re: Bill No. S-90-08-29
An Ordinance approving the issuance of City of Fort Wayne Economic Development Revenue Bonds (Xolox Corporation Project)

Dear Sandra:

Would you please attach this letter to the above-referenced ordinance. The ordinance itself provides for an interest rate not to exceed ten percent. This ordinance does not need to be amended but this letter specifies the exact interest rates and should be a part of the ordinance package.

The interest rate and maturity schedule is as follows:

September 1, 1991	$300,000	6.75%
September 1, 1992	500,000	7.0%
September 1, 1993	600,000	7.125%
September 1, 1994	600,000	7.25%
September 1, 1995	600,000	7.375%
September 1, 1996	600,000	7.5%

Thank you for your assistance in this matter.

Very truly yours,
MILLER CARSON & BOXBERGER

John J. Wernet, Esq.

JJW:ls

Admn. Appr._____

DIGEST SHEET

TITLE OF ORDINANCE ORDINANCE

DEPARTMENT REQUESTING ORDINANCE ECONOMIC DEVELOPMENT

SYNOPSIS OF ORDINANCE ALLOWS THE ISSUANCE AND SALE OF $3,200,000

ECONOMIC DEVELOPMENT REVENUE BONDS FOR XOLOX CORPORATION

S-90-08-29

EFFECT OF PASSAGE AUTHORIZES THE ISSUANCE OF ECONOMIC DEVELOPMENT

REVENUE BONDS/PROJECT MAY BE COMPLETED

EFFECT OF NON-PASSAGE PROJECT WILL NOT BE COMPLETED

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS)_____

ASSIGNED TO COMMITTEE (PRESIDENT)_____

BILL NO. S-90-08-29

REPORT OF THE COMMITTEE ON FINANCE

THOMAS C. HENRY, CHAIRMAN
DONALD J. SCHMIDT, VICE CHAIRMAN
BRADBURY, BURNS, GiaQUINTA

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN (ORDINANCE) (~~RESOLUTION~~) AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO ISSUE ITS "CITY OF FORT WAYNE, INDIANA, ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 1990 (XOLOX CORPORATION PROJECT)" AND LOAN THE PROCEEDS THEREOF TO XOLOX CORPORATION, AND AUTHROIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Thomas C. Henry			
Donald J. Schmidt			
J. J. Bradbury			

DATED: 9-11-90.

Sandra E. Kennedy
City Clerk